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In re Application of :
FENG, Jinming et al. : DECISION ON
Application No.: 10/580,374 :
PCT No.: PCT/CN04/01335 : PETITION
Int. Filing Date: 23 November 2004 :
Priority Date: 28 November 2003 : UNDER 37 CFR 1.47(a)
Attorney's Docket No.: INNP 2 00061 :
For: Ink Cartridge :

This decision is in response to the petition under 37 CFR 1.47(a), filed 10 April 2007, to permit the applicants to file the above-captioned application on behalf of the non-signing inventor, Jinming Feng. The petition under 37 CFR 1.47(a) is DISMISSED.

BACKGROUND

On 23 November 2004, applicants filed international application PCT/CN04/01335, claiming a priority date of 28 November 2003. The thirty-month for paying the basic national fee in the United States expired at midnight on 28 May 2006.

On 23 May 2006, applicants filed a transmittal letter for entry into the national stage in the United States, which was accompanied by, *inter alia*, the requisite basic national fee and a declaration executed by one of the two inventors, Qingguo Xiao.

On 08 January 2007, the United States Designated/Elected Office mailed a Notification of Missing Requirements (Form PCT/DO/EO/905) indicating that a declaration in compliance with 37 CFR 1.497(a)-(b) and the surcharge for late filing of the declaration were required.

On 10 April 2007, applicants filed the present petition accompanied by a one-month extension of time, the surcharge for late filing of the declaration, and statements by Ms. Jin Xia Gong, Ms. Helen Duan and Ms. Gayle Fung.

DISCUSSION

A petition under 37 CFR 1.47(a) must be accompanied by (1) the fee under 37 CFR 1.17(g), (2) a statement of the last known address of the missing inventor, (3) an oath or declaration by each applicant on his or her own behalf and on behalf of the non-signing joint inventor and, (4) factual proof that the missing joint inventor refuses to execute the application or cannot be reached after diligent effort.

As to item (1), in view of applicants' authorization, the petition fee of \$200.00 under 37 CFR 1.17(g) will be charged to Deposit Account No. 06-0308. Hence, item (1) is satisfied.

With regard to item (2), applicants have submitted a statement of the last known address of the non-signing inventor. Hence, item (2) is satisfied.

With regard to item (3), applicants have filed a declaration executed by the other cooperating inventor and containing an unsigned signature block for the non-signing inventor. This declaration complies with 37 CFR 1.497(a)-(b) and is accepted. Hence, item (3) is satisfied.

With regard to item (4), applicants have provided statements by Ms. Jin Xia Gong, Ms. Helen Duan and Ms. Gayle Fung who have firsthand knowledge of the facts recited in the statements. The statement of Ms. Jin Xia Gong indicates that a copy of the application was sent by e-mail to the last known e-mail address (jimfung59@yahoo.com) of non-signing inventor Jinming Feng. However, with respect to Ms. Gayle Fung's statement relating to the non-signing inventor's refusal to sign the declaration, it is noted that non-signing inventor Jinming Feng refused to execute the "assignment and power of attorney forms." Ms. Gayle Fung's statement does not mention that non-signing inventor Jinming Feng refused to execute the declaration. Further, it is noted that according to Ms. Jin Xia Gong, non-signing inventor Jinming Feng was presented via e-mail with "related assignment and power of attorney forms for execution." The statement of Ms. Jin Xia Gong does not mention that non-signing inventor Jinming Feng was presented with the declaration for signing. Hence, it is unclear whether non-signing inventor Jinming Feng was presented with the declaration for signing. Furthermore, it is noted that the statement of Ms. Jin Xia Gong refers to Exhibits (1) and (2) which have not been provided. Similarly for the statement of Ms. Gayle Fung, which also refers to Exhibits (1) and (2) that have not been provided.

Before a refusal can be alleged, it must be demonstrated that a bona fide attempt was made to present a copy of the application papers (specification, claims, drawings, and oath or declaration) to the non-signing inventor for signature. Copies of documentary evidence such as a certified mail return receipt, cover letter of instructions, telegrams, etc., which support a finding that a complete copy of the application papers had been sent to the applicant should be made a part of the declaration or affidavit. Therefore, item (4) has not been satisfied.


As such, the instant petition, to permit the applicants to file the above-captioned application on behalf of the non-signing inventor Jinming Feng does not satisfy the requirements of 37 CFR 1.47(a).

In view of applicants' instant petition, it is submitted that the declaration filed on 23 May 2006 was filed timely. Hence, the surcharge of \$130 for late filing of a declaration, paid on 11 April 2007, will be refunded to Deposit Account No. 06-0308.

CONCLUSION

Applicant's petition to permit the applicants to file the above-captioned application on behalf of the non-signing inventor Jinming Feng is **DISMISSED** without prejudice.

If reconsideration on the merits of this petition is desired, a proper response must be filed within TWO (2) MONTHS from the mail date of this decision. Any reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.47(a)." No additional petition fee is required.



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